

HOUSE BILL NO. 216

INTRODUCED BY CAFERRO

BY REQUEST OF THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS REGARDING THE CHILD SUPPORT ENFORCEMENT PROGRAM TO IMPROVE EFFICIENCY AND EFFECTIVENESS; CLARIFYING ACCESS BY THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES TO A PARTY'S FINANCIAL AND EMPLOYMENT RECORDS; ALLOWING THE DEPARTMENT TO ESTABLISH A MEDICAL SUPPORT ORDER INDEPENDENTLY OF A CHILD SUPPORT ORDER; EXTENDING THE LIFE OF A WARRANT FOR DISTRRAINT FROM 90 DAYS TO 120 DAYS; ALLOWING AN AGREEMENT FOR SERVICE BY ELECTRONIC MEANS OF AN ORDER REQUIRING ENROLLMENT; PROVIDING PRIORITY FOR WITHHOLDING CHILD SUPPORT AND MEDICAL SUPPORT; ALLOWING ATTACHMENT OF CRIME VICTIMS COMPENSATION FOR THE PAYMENT OF MAINTENANCE OR CHILD SUPPORT; AMENDING SECTIONS 40-5-206, 40-5-208, 40-5-225, 40-5-226, 40-5-247, 40-5-412, 40-5-810, 40-5-812, 40-5-813, AND 53-9-129, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 40-5-206, MCA, is amended to read:

"40-5-206. Central unit for information and administration -- cooperation enjoined -- availability of records. (1) The department shall establish a central unit to serve as a registry for the receipt of information, for answering interstate inquiries concerning deserting parents, for receiving and answering requests for information made by consumer reporting agencies under 40-5-261, to coordinate and supervise departmental activities in relation to deserting parents, and to ensure effective cooperation with law enforcement agencies.

(2) During or in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or medical support or paternity, an attempt to locate an obligor, or a contested case, the department or other IV-D agency may request and, notwithstanding any statute making the information confidential, all state, county, and city agencies, officers, and employees shall provide on request information, if known, concerning an obligor or obligee OR AS AN AID TO THE OPERATION OF THE IV-D PROGRAM, including:

(a) name;

1 (b) residential and mailing addresses;

2 (c) date of birth;

3 (d) social security number;

4 (e) wages or other income;

5 (f) number of dependents claimed for state and federal income tax withholding purposes;

6 (g) employer's name, and address, federal employer identification number, North American industry
7 classification system code, active or inactive status of the business and status date, phone number, facsimile
8 number, address type, child support withholding address, and e-mail address of employer;

9 (h) state and local tax and revenue records of the obligor or obligee or an entity in which the obligor or
10 obligee directly or indirectly has an interest in management or rights to earnings or surplus whether or not the
11 interests or rights are exercised FULL OR PARTIAL OWNERSHIP WITH RIGHTS TO PARTICIPATE IN GENERAL MANAGEMENT
12 AND CONTROL THAT ARE DERIVED FROM THE FULL OR PARTIAL OWNERSHIP INTEREST;

13 (i) penal corrections records;

14 (j) address, location, and description of any real property or titled personal property; ~~and~~

15 (k) any other asset in which the obligor or obligee may have an interest, including its location and the
16 extent, nature, and value of the interest; AND

17 (L) THE INFORMATION LISTED IN SUBSECTION (2)(G) FOR ALL MONTANA EMPLOYERS FOR THE OPERATION OF
18 THE DIRECTORY OF NEW HIRES ESTABLISHED UNDER 40-5-922, INCLUDING INFORMATION RECEIVED BY ELECTRONIC
19 TRANSMISSION.

20 (3) Upon service of an administrative subpoena from the department or another IV-D agency during or
21 in anticipation of a delinquency, enforcement, or modification proceeding, a proceeding to establish child or
22 medical support or paternity, an attempt to locate an obligor, or a contested case, public utilities, cable television
23 companies, and financial institutions shall, with regard to an obligor or obligee, provide the department or the
24 requesting IV-D agency with the name and address of the obligor or obligee, the name and address of the
25 obligor's or obligee's employer, and any information on the obligor's or obligee's assets and liabilities contained
26 in customer records.

27 (4) Any information obtained by the department during the course of a child support investigation that
28 is confidential at the source must be treated by the department as confidential and must be safeguarded
29 accordingly. Absent a specific statutory prohibition to the contrary and subject to subsection (6), the department
30 may release information obtained from nonconfidential public and private sources, including information

1 regarding support orders, judgments, and payment records.

2 (5) Absent a specific statutory prohibition or rule to the contrary and subject to subsection (6), use or
3 disclosure of information obtained by the department from confidential sources or any information maintained
4 by the department in its records, including the names, addresses, and social security numbers of obligors and
5 obligees, is limited to:

6 (a) purposes directly related to the provision of services under this chapter;

7 (b) county attorneys and courts having jurisdiction in support and abandonment proceedings and
8 agencies in other states engaged in the enforcement of support of minor children under the federal Social
9 Security Act; and

10 (c) any other use permitted or required by the federal Social Security Act.

11 (6) The department may not disclose information regarding the whereabouts of a party to another party
12 if:

13 (a) the department received notice that a protective order with respect to the party has been entered
14 against the other party; or

15 (b) the department has reason to believe that the release of information may result in physical or
16 emotional harm to the party.

17 (7) A person or private entity that discloses information to the department in compliance with this section
18 is not liable to the obligor or obligee for negligent disclosure.

19 (8) An entity failing to comply with this section is subject to the contempt authority of the department
20 under 40-5-226."

21
22 **Section 2.** Section 40-5-208, MCA, is amended to read:

23 **"40-5-208. Medical support -- obligation enforcement.** (1) In any proceeding initiated pursuant to this
24 part to establish a child support order, whether final or temporary, and in each modification of an existing order,
25 the support order must include a medical support order as defined in 40-5-804. The department may initiate an
26 independent proceeding pursuant to 40-5-225 to establish a medical support order, as defined in 40-5-804,
27 without establishing a child support order in the proceeding.

28 (2) If the department is providing IV-D services for a child, the department shall also enforce any order
29 issued by a court or administrative agency of competent jurisdiction that:

30 (a) requires the ~~obligor~~ parent to make payments for the health or medical needs of the child, whether

expressed in monthly dollar amounts or in a lump-sum dollar amount. The department shall apply the same enforcement remedies as are available for the enforcement of child support as if those remedies expressly applied to medical or health obligations.

(b) requires the ~~obligor~~ parent to enroll a child in a health benefit plan or individual insurance as defined in 40-5-804. The department may take action to enforce the order under the provisions of part 8 or may impose any other appropriate remedy.

(3) (a) To permit the department to determine whether enforcement action is necessary, if the ~~obligor~~ parent is required to enroll the child in a health benefit plan or individual insurance, upon written request by the department, the ~~obligor~~ parent shall provide the name of the individual insurance carrier or health benefit plan, the policy identification name and number, the names of the persons covered, and any other pertinent information regarding coverage.

(b) Failure of the ~~obligor~~ parent to provide the requisite information to the department may be punished as a contempt under 40-5-226.

(4) If the department is providing services for a child and a child support order or modification of a child support order does not include a medical support order as defined in 40-5-804 or fails to include any other provision for the health and medical needs of the child:

(a) upon notice to the ~~obligor~~ parent, the ~~obligor~~ parent shall enroll the child in a health or medical insurance plan available to the ~~obligor~~ parent through an employer or other group for which the premium is partially or entirely paid by the employer or other group; and

(b) the ~~obligor~~ parent shall continue enrollment of the child in the plan until:

(i) a medical support order is entered;

(ii) the ~~obligor~~ parent can demonstrate to the department that the cost of providing coverage is not reasonable;

(iii) the ~~obligor's~~ parent's employment or membership in the group has terminated and the plan is no longer available to the ~~obligor~~ parent;

(iv) the employer or group eliminates coverage for all employees or members; or

(v) the department ceases to provide services for the child.

(5) If the ~~obligor~~ parent fails to enroll a child in a health or medical insurance plan under subsection (4) or lets coverage lapse, the failure or lapse may be punished as a contempt under 40-5-226. A contempt may not be found if the ~~obligor~~ parent shows that the cost of providing coverage for the child is not reasonable."

1

2 **Section 3.** Section 40-5-225, MCA, is amended to read:

3 **"40-5-225. Notice of financial responsibility -- temporary and final support obligations --**
4 **administrative procedure.** (1) In the absence of an existing support order, when the requirements of this
5 section are met, the department may enter an order requiring a child's parent or parents to pay an amount each
6 month for the support of the child. ~~The support~~ An order issued under this section must include a medical
7 support order as required by 40-5-208.

8 (2) An action to establish a support order must be commenced by serving a notice of financial
9 responsibility on the parent or parents. The notice must include a statement:

10 (a) of the names of the child, the obligee, and, if different than the obligee, the child's guardian or
11 caretaker relative;

12 (b) of the dollar amount of the support obligation to be paid each month for the child, if any;

13 (c) that the monthly support obligation, if any, is effective on the date of service of the notice, unless an
14 objection is made and a hearing is requested, and may be collected during the proceeding that establishes the
15 support obligation by any remedy available to the department for the enforcement of child support obligations;

16 (d) that in addition to or independent of child support, the parent or parents may be ordered to provide
17 for the child's medical support needs;

18 (e) that any party may request a hearing to contest the amount of child support shown in the notice or
19 to contest the establishment of a medical support order;

20 (f) that if a party does not timely file a request for hearing, support, including medical support, will be
21 ordered as declared in the notice or in accordance with the child support guidelines adopted under 40-5-209;

22 (g) that if a party does request a hearing, the other parties may refuse to participate in the proceedings
23 and that the child support and medical support order will be determined using the information available to the
24 department or provided at the hearing;

25 (h) that a party's refusal to participate is a consent to entry of a child support and medical support order
26 consistent with the department's determination; and

27 (i) that the parties are entitled to a fair hearing under 40-5-226.

28 (3) If a support action is pending in district court and a temporary or permanent support obligation has
29 not been ordered or if a paternity action is pending and there is clear and convincing evidence of paternity based
30 on paternity blood tests or other evidence, the department may enter an order requiring a child's parent or

1 parents to pay an amount each month for the temporary support of the child pending entry of a support order
2 by the district court. The temporary support order must include a medical support order as required by 40-5-208.

3 (4) An action to establish a temporary support order must be commenced by serving a notice of
4 temporary support obligation on the parent or parents. In addition to the statements required in subsection (2),
5 the notice must include a statement that:

6 (a) a party may request a hearing to show that a temporary support obligation is inappropriate under
7 the circumstances; and

8 (b) the temporary support order will terminate upon the entry of a final support order or an order of
9 nonpaternity. If the final order is retroactive, any amount paid for a particular period under the temporary support
10 order must be credited against the amounts due under the final order for the same period, but excess amounts
11 may not be refunded. If an order of nonpaternity is issued or if the final support order states that periodic support
12 obligation is not proper, the obligee shall refund to the obligor any improper amounts paid under the temporary
13 support order, plus any costs that the obligor incurs in recovering the amount to be refunded.

14 (5) (a) If a temporary support order is entered or if proceedings are commenced under this section for
15 a married obligor, the department shall vacate any support order or dismiss any proceeding under this part if it
16 finds that the parties to the marriage have:

17 (i) reconciled without the marriage having been dissolved;

18 (ii) made joint application to the department to vacate the order or dismiss the proceeding; and

19 (iii) provided proof that the marriage has been resumed.

20 (b) The department may not vacate a support order or dismiss a proceeding under this subsection (5)
21 if it determines that the rights of a third person or the child are affected. The department may issue a new notice
22 of temporary support obligation under this section if the parties subsequently separate.

23 (6) A notice of financial responsibility and the notice of temporary support obligation may be served
24 either by certified mail or in the manner prescribed for the service of a summons in a civil action in accordance
25 with the Montana Rules of Civil Procedure.

26 (7) If prior to service of a notice under this section the department has sufficient financial information,
27 the department's allegation of the obligor's monthly support responsibility, whether temporary or final, must be
28 based on the child support guidelines established under 40-5-214. If the information is unknown to the
29 department, the allegations of the parent's or parents' monthly support responsibility must be based on the
30 greater of:

1 (a) the maximum amount of public assistance that could be payable to the child under Title 53 if the
2 child was otherwise eligible for assistance; or

3 (b) the child's actual need as alleged by the custodial parent, guardian, or caretaker of the child.

4 (8) (a) A party who objects to a notice of financial responsibility or notice of temporary support obligation
5 may file a written request for a hearing with the department:

6 (i) within 20 days from the date of service of a notice of financial responsibility; and

7 (ii) within 10 days from the date of service of a notice of temporary support obligation.

8 (b) If the department receives a timely request for a hearing, it shall conduct one under 40-5-226.

9 (c) If the department does not receive a timely request for a hearing, it shall order the parent or parents
10 to pay child support, if any, and to provide for the child's medical needs as stated in the notice. The child support
11 obligation must be the amount stated in the notice or determined in accordance with the child support guidelines
12 adopted under 40-5-209.

13 (9) If the department is unable to enter an obligation in accordance with the child support guidelines
14 because of default of a party, the department may, upon notice to the parties to the original order, substitute a
15 support order made in accordance with the guidelines for the defaulted order.

16 (10) After establishment of an order under this section, the department may initiate a subsequent action
17 on the original order to establish a child support or medical support obligation for another child of the same
18 parents.

19 (11) A child support and medical support order under subsection (1) is effective as of the date of service
20 of a notice of financial responsibility on the parent or parents and may be collected by any remedy available to
21 the department for the enforcement of child support obligations. A final order is retroactive to the date of service
22 of the notice of financial responsibility as provided in this subsection, except that the final order may also
23 determine child support for a prior period as provided in 40-5-226(3).

24 (12) A child support and medical support order under subsection (1) continues until the child reaches
25 18 years of age or until the child's graduation from high school, whichever occurs later, but not later than the
26 child's 19th birthday, unless the child is sooner emancipated by court order. A temporary support obligation
27 established under subsection (3) continues until terminated as provided in subsection (5) or until the temporary
28 order is superseded by a final order, judgment, or decree."

29
30 **Section 4.** Section 40-5-226, MCA, is amended to read:

1 **"40-5-226. Administrative hearing -- nature -- place -- time -- determinations -- failure to appear**
2 **-- entry of final decision and order.** (1) The administrative hearing is defined as a "contested case".

3 (2) If a hearing is requested, it must initially be conducted by teleconference methods and is subject to
4 the Montana Administrative Procedure Act. At the request of a party or upon a showing that the party's case was
5 substantially prejudiced by the lack of an in-person hearing, the hearings officer shall grant a de novo in-person
6 hearing.

7 (3) The hearings officer shall determine the liability and responsibility, if any, of the parent or parents
8 under the notice and shall enter a final decision and order in accordance with the determination. The order may
9 award support from the date of:

10 (a) the child's birth if paternity was established under 40-5-231 through 40-5-238 or under Title 40,
11 chapter 6, part 1, subject to the limitation in 40-6-108(3)(b);

12 (b) the parties' separation if support is initially established under 40-5-225; or

13 (c) notice to the parties of a support modification request under 40-5-273.

14 (4) (a) Except as provided in subsection (4)(b), if the parent or parents fail to appear at the hearing or
15 to timely file a request for a hearing, the hearings officer, upon a showing of valid service, shall enter a default
16 decision and order declaring the amount stated in the notice to be final.

17 (b) In a multiple party proceeding under 40-5-225, if one party files a timely request for hearing, the
18 matter must be set for hearing. Notice of the hearing must be served on the parties. If a party refuses to appear
19 for the hearing or participate in the proceedings, the hearings officer shall determine child support and medical
20 support orders based on the notice, information available to the department, and evidence provided at the
21 hearing by the appearing parties. A party's refusal to appear is a consent to entry of child and medical support
22 orders consistent with the hearings officer's determination. However, the default order may not be for more than
23 the support requested in the notice unless the hearings officer finds that the evidence requires a larger amount.

24 (5) In a hearing to determine financial responsibility, whether temporary or final, and in any proceeding
25 to modify support under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278, the monthly support responsibility
26 must be determined in accordance with the evidence presented and with reference to the uniform child support
27 guidelines adopted by the department under 40-5-209. The hearings officer is not limited to the amounts stated
28 in the notice. The guidelines must be used in all cases, including cases in which the order is entered upon the
29 default of a party and those in which the order is entered upon the parties' consent. A verified representation of
30 a defaulting parent's income, based on the best information available, may be used when a parent fails to

1 provide financial information for use in applying the guidelines. The amount determined under the guidelines
2 is presumed to be an adequate and reasonable support award, unless the hearings officer finds by clear and
3 convincing evidence that the application of the guidelines is unjust to the child or to any of the parties or is
4 inappropriate in a particular case. If the hearings officer finds that the guideline amount is unjust or inappropriate
5 in a particular case, the hearings officer shall state the reasons for finding that the application of the guidelines
6 is unjust to the child or a party or is inappropriate in that particular case. Similar findings must also be made in
7 a case in which the parties have agreed to a support amount that varies from the guideline amount. The hearings
8 officer may vary the application of the guidelines to limit the obligor's liability for past support to the proportion
9 of expenses already incurred that the hearings officer considers just. Findings that rebut and vary the guideline
10 amount must include a statement of the amount of support that would have ordinarily been ordered under the
11 guidelines.

12 (6) In a hearing to enforce a support order or to establish paternity under this chapter, the department
13 shall send a copy of the notice of hearing to the obligee by regular mail addressed to the obligee's last-known
14 address. The obligee may attend and observe the hearing as a nonparty. This subsection does not limit
15 participation of an obligee who is a party to the proceedings or who is called as a witness to testify.

16 (7) (a) Within 60 days after the hearing has been concluded, any posthearing briefs are received, and
17 all the evidence submitted, except for good cause, the hearings officer shall enter a final decision and order. The
18 determination of the hearings officer constitutes a final agency decision, subject to judicial review under 40-5-253
19 and the provisions of the Montana Administrative Procedure Act. A copy of the final decision must be delivered
20 or mailed to each party, each party's attorney, and the obligee if the obligee is not a party.

21 (b) A child support or medical support obligation established under this section is subject to the
22 registration and processing provisions of part 9 of this chapter.

23 (8) A child support or medical support order entered under this part must contain a statement that the
24 order is subject to review and modification by the department upon the request of the department or a party
25 under 40-5-272, 40-5-273, and 40-5-276 through 40-5-278 when the department is providing services under IV-D
26 for the enforcement of the order.

27 (9) A support debt determined pursuant to this section is subject to collection action without further
28 necessity of action by the hearings officer.

29 (10) A child support or medical support obligation determined under this part by reason of the obligor's
30 failure to request a hearing under this part or failure to appear at a scheduled hearing may be vacated, upon the

1 motion of an obligor, by the hearings officer within the time provided and upon a showing of any of the grounds
2 enumerated in the Montana Rules of Civil Procedure. When issuing a support order, the department shall
3 consider whether any of the exceptions to immediate income withholding found in 40-5-411 apply, and, if an
4 exception is applicable, the department shall include the exception in the support order.

5 (11) (a) Unless the hearings officer makes a written exception under 40-5-315 or 40-5-411 and the
6 exception is included in the support order, each order establishing a child support obligation, whether temporary
7 or final, and each modification of an existing child support order under this part is enforceable by immediate or
8 delinquency income withholding, or both, under Title 40, chapter 5, part 4. A support order that omits that
9 provision or that provides for a payment arrangement inconsistent with this section is nevertheless subject to
10 withholding for the payment of support without need for an amendment of the support order or for any further
11 action by the hearings officer.

12 (b) If an obligor is excepted from paying support through income withholding, the support order must
13 include a requirement that whenever a party to the case is receiving IV-D services, support payments must be
14 paid through the department as provided in 40-5-909.

15 (12) (a) If the department establishes paternity or establishes or modifies a child support obligation, the
16 department's order must include a provision requiring each party other than the department to promptly file with
17 the department and to update, as necessary, information on:

18 (i) identity of the party;

19 [(ii) social security number;]

20 (iii) residential and mailing addresses;

21 (iv) telephone number;

22 (v) driver's license number;

23 (vi) name, address, and telephone number of employer; and

24 (vii) if the child is covered by a health or medical insurance plan, the name of the insurance carrier or
25 health benefit plan, the policy identification number, the name of the persons covered, and any other pertinent
26 information regarding coverage or, if the child is not covered, information as to the availability of coverage for
27 the child through the obligor's and obligee's employer.

28 (b) The order must further direct that in a subsequent child support enforcement action, upon sufficient
29 showing that diligent effort has been made to ascertain the location of the party, the department's due process
30 requirements for notice and service of process are met with respect to the party upon delivery of written notice

1 by regular mail to the most recent address of the party or the party's employer's address reported to the
2 department.

3 (c) The department shall keep the information provided under subsection (12)(a) confidential except
4 as necessary for purposes of Title IV-D of the Social Security Act.

5 (13) The hearings officer may:

6 (a) compel obedience to the hearings officer's orders, judgments, and process and to subpoenas and
7 orders issued by the department, including income-withholding orders issued pursuant to 40-5-415;

8 (b) compel the attendance of witnesses at administrative hearings;

9 (c) compel obedience of subpoenas for paternity blood tests;

10 (d) compel the production of accounts, books, documents, and other evidence;

11 (e) punish for civil contempt. Contempt authority does not prevent the department from proceeding in
12 accordance with the provisions of 2-4-104.

13 (f) compel the production of information requested by the department or a IV-D agency of another state
14 under 40-5-443.

15 (14) A contempt occurs whenever:

16 (a) a person acts in disobedience of any lawful order, judgment, or process of the hearings officer or
17 of the department;

18 (b) a person compelled by subpoena to appear and testify at an administrative hearing or to appear for
19 genetic paternity tests fails to do so;

20 (c) a person compelled by subpoena duces tecum to produce evidence at an administrative hearing
21 fails to do so;

22 (d) an obligor or obligee subject to a discovery order issued by the hearings officer fails to comply with
23 discovery requests;

24 (e) a person or entity compelled by administrative subpoena from the department or another IV-D
25 agency to produce financial information or other information needed to establish paternity or to establish, modify,
26 or enforce a support order fails to do so;

27 (f) a payor under an order to withhold issued pursuant to 40-5-415 fails to comply with the provisions
28 of the order. In the case of a payor under an income-withholding order, a separate contempt occurs each time
29 that income is required to be withheld and paid to the department and the payor fails to take the required action.

30 (g) a payor or labor union fails to provide information to the department or another IV-D agency when

1 requested under 40-5-443[; or]

2 [(h) a financial institution uses information provided by the department pursuant to 40-5-924 for any
3 other purpose without the authorization of the department].

4 (15) Before initiating a contempt proceeding, the department shall give the alleged contemnor notice
5 by personal service or certified mail of the alleged infraction and a reasonable opportunity to comply with the
6 law and to cure the alleged infraction. In order to initiate a contempt proceeding, an affidavit of the facts
7 constituting a contempt must be submitted to the hearings officer, who shall review it to determine whether there
8 is cause to believe that a contempt has been committed. If cause is found, the hearings officer shall issue a
9 citation requiring the alleged contemnor to appear and show cause why the alleged contemnor should not be
10 determined to be in contempt and required to pay a penalty of not more than \$500 for each count of contempt.
11 The citation, along with a copy of the affidavit, must be served upon the alleged contemnor either by personal
12 service or by certified mail. All other interested persons may be served a copy of the citation by first-class mail.

13 (16) At the time and date set for hearing, the hearings officer shall proceed to hear witnesses and take
14 evidence regarding the alleged contempt and any defenses to the contempt. If the alleged contemnor fails to
15 appear for the hearing, the hearing may proceed in the alleged contemnor's absence. If the hearings officer finds
16 the alleged contemnor in contempt, the hearings officer may impose a penalty of not more than \$500 for each
17 count found. The hearings officer's decision constitutes a final agency decision, subject to judicial review under
18 40-5-253 and subject to the provisions of Title 2, chapter 4.

19 (17) An amount imposed as a penalty may be collected by any remedy available to the department for
20 the enforcement of child support obligations, including warrant for distraint pursuant to 40-5-247, income
21 withholding pursuant to Title 40, chapter 5, part 4, and state debt offset, pursuant to Title 17, chapter 4, part 1.
22 The department may retain any penalties collected under this section to offset the costs of administrative
23 hearings conducted under this chapter.

24 (18) The penalties charged and collected under this section must be paid into the state treasury to the
25 credit of the child support enforcement division special revenue fund and must be accompanied by a detailed
26 statement of the amounts collected. (Bracketed language terminates on occurrence of contingency--sec. 1, Ch.
27 27, L. 1999.)"

28
29 **Section 5.** Section 40-5-247, MCA, is amended to read:

30 **"40-5-247. Warrant for distraint -- effect -- satisfaction of support lien -- redemption.** (1) (a) The

1 department may issue a warrant for distraint to execute support liens established by 40-5-248 or to enforce and
2 collect any money obligation authorized under this chapter.

3 (b) The warrant must be an order, under official seal of the department, directed to a sheriff of any
4 county of the state or to any levying officer authorized by law to enforce a district court judgment. The order must
5 command the recipient to levy upon and sell nonexempt real and personal property to satisfy the support lien
6 upon which the warrant is based. The warrant must include notice of:

7 (i) the existence of exemptions from execution;

8 (ii) the procedure by which an exemption may be claimed; and

9 (iii) the right to request a hearing to determine an exemption claim.

10 (c) A warrant must be signed by the director of the department or the director's designee.

11 (d) The warrant must be for the amount of the support lien or the amount of any other money obligation
12 determined under this chapter, including interest and fees, if any.

13 (e) A warrant for distraint has the same effect as a writ of execution issued by a district court to enforce
14 money judgments.

15 (2) (a) A warrant for distraint may be sent by the department to the sheriff or levying officer. Upon receipt
16 of the warrant, the sheriff or levying officer shall proceed to execute upon the warrant in the same manner as
17 prescribed for execution upon a judgment.

18 (b) A warrant for distraint may also be served by acknowledgment of service ~~upon an entity that has~~
19 ~~entered into an agreement with the department to accept service of a warrant for distraint, INCLUDING A WARRANT~~
20 RECEIVED BY ELECTRONIC TRANSMISSION. Upon receipt of the warrant, the served entity shall proceed to execute
21 upon the warrant in the same manner as prescribed for execution upon a judgment and shall return the warrant,
22 along with any funds collected, within ~~90~~ 120 days of receipt of the warrant.

23 (c) A copy of the warrant must be mailed to the obligor at the obligor's last-known address at or promptly
24 after the time of seizure.

25 (d) Within 10 days after the date of the mailing of the warrant to the obligor, an obligor claiming an
26 exemption may request a hearing to determine the existence of the exemption. The department shall convene
27 a contested case hearing to determine the claimed exemption. An order entered under this section is a final
28 agency order, subject to judicial review under Title 2, chapter 4, part 7.

29 (e) A sheriff or levying officer shall return a warrant, along with any funds collected, within ~~90~~ 120 days
30 of the receipt of the warrant.

1 (f) Funds resulting from execution upon the warrant must first be applied to the sheriff's or levying
2 officer's costs, any superior liens, the support lien, or other money obligation and to any inferior liens. Any
3 amounts in excess of this distribution must be paid to the obligor.

4 (g) If the warrant is returned not fully satisfied, the department has the same remedies to collect the
5 deficiency as are available for any civil judgment.

6 (3) A sheriff's or levying officer's levy against real and personal property of the obligor is not limited to
7 property in possession of persons or other entities given notice of a support lien under 40-5-242.

8 (4) (a) Upon receiving payment in full of the unpaid warrant amount plus penalty and fees, if any, and
9 accumulated interest, the department shall release the warrant.

10 (b) Upon receiving partial payment of the unpaid warrant amount or if the department determines that
11 a release or partial release of the warrant will facilitate the collection of the unpaid amount, penalty, and interest,
12 the department may release or may partially release the warrant for distraint. The department may release the
13 warrant if it determines that the warrant is unenforceable.

14 (5) An obligor or other person or entity having an interest in real or personal property levied upon by
15 a warrant for distraint at any time prior to sale of the property may pay the amount of the support lien or other
16 money obligation and any costs incurred by the sheriff or levying officer serving the warrant. Upon payment in
17 full, the property must be restored to the obligor or other person and all proceedings on the warrant must cease.

18 (6) An obligor or other person or entity having an interest in real property levied upon and sold by a
19 sheriff or levying officer pursuant to a warrant for distraint may, within 240 days after sale of the property, redeem
20 the property by making payment to the purchaser in the amount paid by the purchaser plus interest at the
21 statutory interest rate payable on judgments recovered in the district court.

22 (7) At any time after distraint of property under a warrant for distraint, the department may release all
23 or part of the seized property without liability if payment of the support lien or other money obligation is assured
24 or if the action will facilitate collection of the support lien or other money obligation. The release or return does
25 not operate to prevent future action to collect the warrant amount from the same or other property.

26 (8) The department may issue a warrant for distraint to collect a support lien or other money obligation
27 under this section at any time within the statutory limitation period for enforcing and collecting delinquent child
28 support.

29 (9) The use of the warrant for distraint is not exclusive, and the department may use any other remedy
30 provided by law for the collection of child support amounts."

1

2 **Section 6.** Section 40-5-412, MCA, is amended to read:

3 **"40-5-412. Delinquency income withholding.** (1) (a) In the case of support orders not subject to
4 immediate income withholding under 40-5-411, including cases in which the court or administrative authority has
5 made a finding of good cause or determines that an alternative arrangement exists, the income of the obligor
6 is subject to withholding under this part beginning on the day the obligor becomes delinquent in the payment of
7 support.

8 (b) For purposes of this section, an obligor becomes delinquent 8 working days after the last day of the
9 month in which the payment is due.

10 (c) Agreements or orders establishing a schedule for payment of delinquent support do not prevent
11 income withholding under this part.

12 (2) (a) If the department determines that an obligor is delinquent, the department may notify the obligor
13 that income withholding will be initiated if the delinquent amount is not received within 8 days of the date of the
14 notice. If the obligor does not pay the delinquent amount within that time, the department may immediately send
15 an order to withhold income to any payor. Notification that income withholding will be initiated if the delinquent
16 amount is not received within 8 days of the date of the notice is not necessary if such a notice was given for a
17 prior delinquency and the prior delinquency in fact existed. This notice is different from the notice required by
18 subsection (2)(b). ~~The order must be limited to current support unless modified to include arrears as provided~~
19 ~~in 40-5-413.~~

20 (b) At the same time an order to withhold income is sent to a payor, the department shall notify the
21 obligor as provided in 40-5-413 that income withholding has been initiated.

22 (3) Notwithstanding the provisions of subsection (1), income withholding must be initiated, without
23 regard to whether there is a delinquency, on the earlier of:

24 (a) the date the obligor requests that withholding begin; or

25 (b) at the request of the obligee if the obligor is found, after an opportunity for hearing under 40-5-414,
26 to be delinquent under the terms of an alternative arrangement for the payment of support.

27 (4) To accomplish the purpose of subsection (1), the department shall monitor all support payments not
28 otherwise subject to immediate withholding. To facilitate monitoring, the department by written notice to the
29 obligor may direct an obligor to pay all support through the department, notwithstanding a court order directing
30 payments to be made to the obligee or clerk of court.

(5) The only basis for contesting withholding under this section is a mistake of fact, which does not include a mistake of fact relating to establishment of custody and visitation but includes a mistake:

- (a) concerning the obligor's identity;
- (b) concerning the existence of the support obligation;
- (c) concerning the amount of support to be paid;
- (d) in the determination that the obligor is delinquent in the payment of support;
- (e) in computation of delinquent support amounts owed; or
- (f) in the allegation that the obligor is in default of an alternative agreement.

(6) A mistake of fact under subsection (5) does not include mistakes relating to issues of paternity or establishment of custody and visitation."

Section 7. Section 40-5-810, MCA, is amended to read:

"40-5-810. Notice of intent to enroll -- order to enroll -- authorization to enroll and participate in health benefit plan -- rules. (1) When a parent is required by a medical support order to obtain a health benefit plan for a child, the parent may be served with a notice of intent to enroll the child in any plan available to that parent. The notice may be issued separately or may be combined with any other notice issued under this part.

(2) The notice must contain a statement of the:

- (a) procedures to follow if the parent wishes to contest enrollment of a child in the plan;
- (b) conditions under which enrollment will occur and that enrollment applies to all current and subsequent plans; and
- (c) period of time within which the parent may file a request for a hearing to contest the enrollment.

(3) For notices issued by the department under this section, hearings must be contested cases under Title 2, chapter 4.

(4) The notice must be served upon the parent by certified mail or personally, including by acknowledgment of service.

(5) An order requiring enrollment of a child in a plan may be issued:

- (a) at any time after the parent's time for filing a request for a hearing on the notice of intent to enroll has lapsed;
- (b) as a result of a hearing that authorizes an order to enroll;
- (c) upon identifying a plan that is available to the parent; or

(d) upon determining that the cost of the plan available to the parent is reasonable.

(6) An order requiring enrollment in a plan may be served on a plan administrator, an employer, or another individual or entity by certified mail, ~~or~~ personally, including by acknowledgment of service, or by electronic service upon an entity that has entered into an agreement with the department to accept electronic service of an order under this part.

(7) A plan administrator shall enroll a child when given a medical support order or an order to enroll the child issued under this section, even if a parent fails to execute documents required by the plan. The parents, the department, and a third-party custodian may release to a plan provider, employer, union, or other group any information necessary to obtain or enforce medical support or to facilitate the preparation, submission, processing, verification, or payment of claims.

(8) The signature of either parent, of an authorized representative of the department, or of a third-party custodian or the receipt of an order to enroll the child issued under this section authorizes the plan to receive and process claims and exercise any available options for the continuation or extension.

(9) (a) The order to enroll the child must instruct the employer to:

(i) transfer the ~~notice and~~ order to the plan administrator within 20 working days ~~of service~~ or by another date specified in the order;

(ii) notify the entity issuing the order of any lapse in insurance coverage or employment;

(iii) notify the entity issuing the order when the child is enrolled;

(iv) withhold any premiums from the parent's income and transfer the premiums to the plan; and

(v) not disenroll the child except in situations specified in the order.

(b) The order to enroll the child must instruct the plan administrator to, within 40 working days of the date of receipt of the order:

(i) take steps to cover the child, to notify the employer, and to provide verification of enrollment and a plan description to the department, parents, and any third-party custodian of the child; or

(ii) provide information to the entity issuing the order concerning why coverage is not available.

(10) The department may adopt rules in conformity with federal law establishing the priority of withholdings for financial support and medical support. Regardless of the priority of withholdings, the maximum amount withheld from the parent's wages or salary, including fees, may not exceed the maximum amount permitted under the federal Consumer Credit Protection Act, 15 U.S.C. 1673.

(11) An order to enroll may be modified or replaced at any time to add a child to or remove a child from

1 a plan, consistent with the parent's medical support obligation.

2 (12) The department may terminate an order to enroll issued by the department when the department
3 is no longer authorized to enforce the parent's medical support obligation, when the parent's medical support
4 obligation is terminated, or when the department determines that the cost of the plan to the parent is not
5 reasonable."

6
7 **Section 8.** Section 40-5-812, MCA, is amended to read:

8 **"40-5-812. Obligations of health benefit plan.** (1) Upon receipt of a medical support order requiring
9 a parent to provide coverage for a child or an order requiring enrollment of a child pursuant to 40-5-810, the
10 administrator of a health benefit plan who receives the order shall accept the order as a valid authorization to
11 enroll or provide benefits to the child. The health benefit plan may rely upon the face of the order and need not
12 inquire as to its legal sufficiency.

13 (2) A plan administrator shall give the nonobligated parent, the department, whenever public assistance
14 is paid to the child, or a third-party custodian all notices and correspondence from the plan and allow them to
15 freely communicate and interact with the plan in all respects regarding the child's benefits as fully and effectively
16 as if done by the obligated parent.

17 (3) A copy of the medical support order or an order requiring enrollment of the child pursuant to
18 40-5-810 must be accepted by the plan administrator as a request and application of the eligible obligated parent
19 requesting that new or continued benefits, including continuation coverage available under COBRA, be provided
20 for the child. As soon as practical and no later than 30 days after receipt of the order or upon the obligated parent
21 obtaining eligibility, the child must be enrolled under the plan as an individual entitled to available benefits.
22 Enrollment may not be delayed until an open enrollment period.

23 (4) If a plan is provided by an employer or other payor of income, the payor shall deduct the necessary
24 premiums, if any, from the income of the obligated parent and remit the premiums to the plan as provided in
25 40-5-813.

26 (5) Within 30 days after receipt of a copy of a medical support order or within 40 working days after the
27 date of an order issued pursuant to 40-5-810, the health benefit plan shall give written notice to both parents,
28 to the department, and to any third-party custodian setting forth the status of the child's enrollment in the plan
29 and the addresses and telephone numbers of the offices where further information can be obtained and where
30 changes of address and other updated information should be submitted.

(6) If coverage is transferred to a different plan, within 30 days of transfer, the new plan shall provide written notice to both parents, to the department, whenever public assistance is paid for the child, or to the third-party custodian setting forth the status of the child's enrollment in the plan and the addresses and telephone numbers of the offices where further information can be obtained and where changes of address and other updated information should be submitted.

(7) A plan administrator may not terminate a child's coverage unless:

(a) written evidence shows that the medical support order or the order requiring enrollment of the child pursuant to 40-5-810 is no longer in effect, that the child will be enrolled in another health benefit plan, or that individual insurance is provided;

(b) the employer, union, or other group eliminates coverage for all members or employees;

(c) the plan is available through the obligated parent's employer or other payor of income and the obligated parent's employment or right to receive income from the payor is terminated and continued coverage under COBRA is not available or the time for such coverage is expired; or

(d) the plan is available through the obligated parent's employer or other payor of income, the amount of the premium or the premium together with child support exceeds the limits in this section, and the other parent, the department, or the third-party custodian has not cured the insufficiency under 40-5-811."

Section 9. Section 40-5-813, MCA, is amended to read:

"40-5-813. Obligation of payor. (1) Upon receipt of a medical support order or an order requiring enrollment of the child pursuant to 40-5-810, a payor providing a health benefit plan shall withhold from the obligated parent's income an amount equal to the required premium, if any, and apply the withheld amount to the plan premium, except that amounts withheld may not exceed the maximum amount permitted under the federal Consumer Credit Protection Act. If the premium exceeds the maximum, the payor may not withhold the excess. If the total cost of the premium, together with and child support to be withheld, ~~exceeds the maximum,~~ for current support and arrears exceeds the maximum amount permitted under the federal Consumer Credit Protection Act, the current child support ~~has priority~~ and the full cost of the premium have priority before the ~~arrears. If the total cost of the premium and current support exceed the amount of permissible garnishment, the~~ current support and arrears take priority over the premium up to the maximum amount permitted under the federal Consumer Credit Protection Act. The payor may not withhold the part of the premium that is in excess of the maximum.

(2) A medical support order or an order requiring enrollment of the child pursuant to 40-5-810 has priority over garnishment of the income of the obligated parent for any purpose, except child support.

(3) (a) The payor shall continue withholding premiums when an obligated parent resumes employment following any break in service, layoff, leave of absence, or other similar circumstance.

(b) Upon the termination of employment, extended layoff, or any other break in service that causes coverage under a health benefit plan to cease, the payor shall immediately notify the other parent and the department or the third-party custodian; if either submitted the medical support order, the order requiring enrollment of the child pursuant to 40-5-810, or ~~submitted~~ a written notice of interest to the plan.

(4) (a) A payor who is an employer may not discharge, refuse to employ, or take other disciplinary action against an obligated parent solely because of the issuance of a medical support order or an order requiring enrollment of the child pursuant to 40-5-810.

(b) The obligated parent has the burden of proving that the issuance of the medical support order or the order requiring enrollment of the child pursuant to 40-5-810 was the sole reason for the employer's action.

(c) A payor knowingly violating this section is subject to the contempt powers of the tribunal issuing the medical support order or the order requiring enrollment of the child pursuant to 40-5-810. The tribunal may, in addition, impose a civil penalty of not more than \$150."

Section 10. Section 53-9-129, MCA, is amended to read:

"53-9-129. Award not subject to execution, attachment, garnishment, or assignment -- exception.

(1) An award is not subject to execution, attachment, garnishment, or other process, EXCEPT AN EXECUTION, ATTACHMENT, OR GARNISHMENT OF A RIGHT TO COMPENSATION FOR WORK LOSS TO SECURE PAYMENT OF MAINTENANCE OR CHILD SUPPORT.

(2) An assignment or agreement to assign a right to compensation in the future is unenforceable except:

(a) an ~~execution, attachment, garnishment, or~~ assignment of a right to compensation for work loss to secure payment of maintenance or child support; or

(b) an assignment of a right to compensation to the extent that the benefits are for the cost of products, services, or accommodations necessitated by the injury or death on which the claim is based and are provided or to be provided by the assignee."

NEW SECTION. **Section 11. Effective date.** [This act] is effective on passage and approval.

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